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SESSION ID: LAW-T01

For Whom Does the Whistleblower Blow?
A Mock Trial

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United States District Court for the Northern District of California

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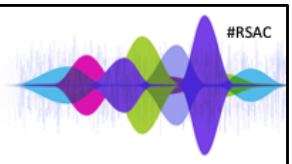

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Agenda for the mock hearing

- We lay our scene and Call to Order
- Fact & expert witness testimony
- Legal argument
- Audience designated as law clerks
- Decision & commentary by Judge Beeler

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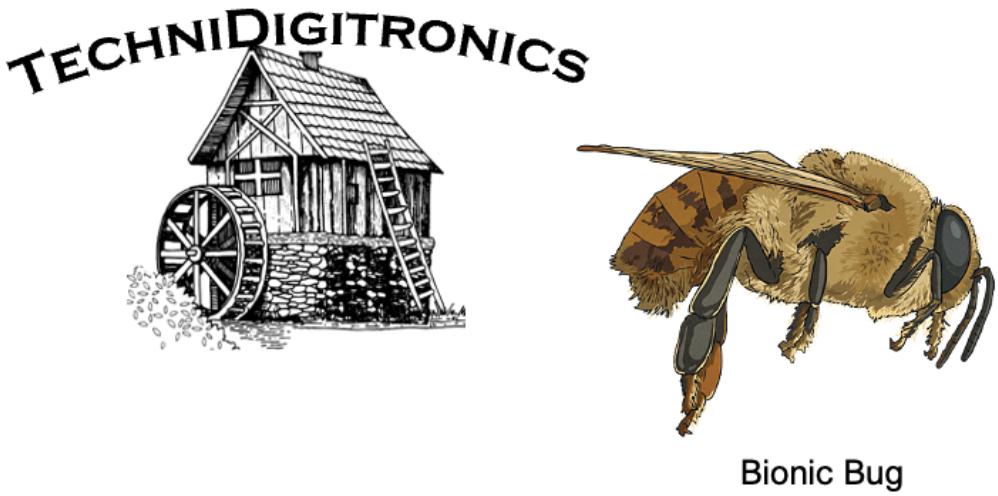
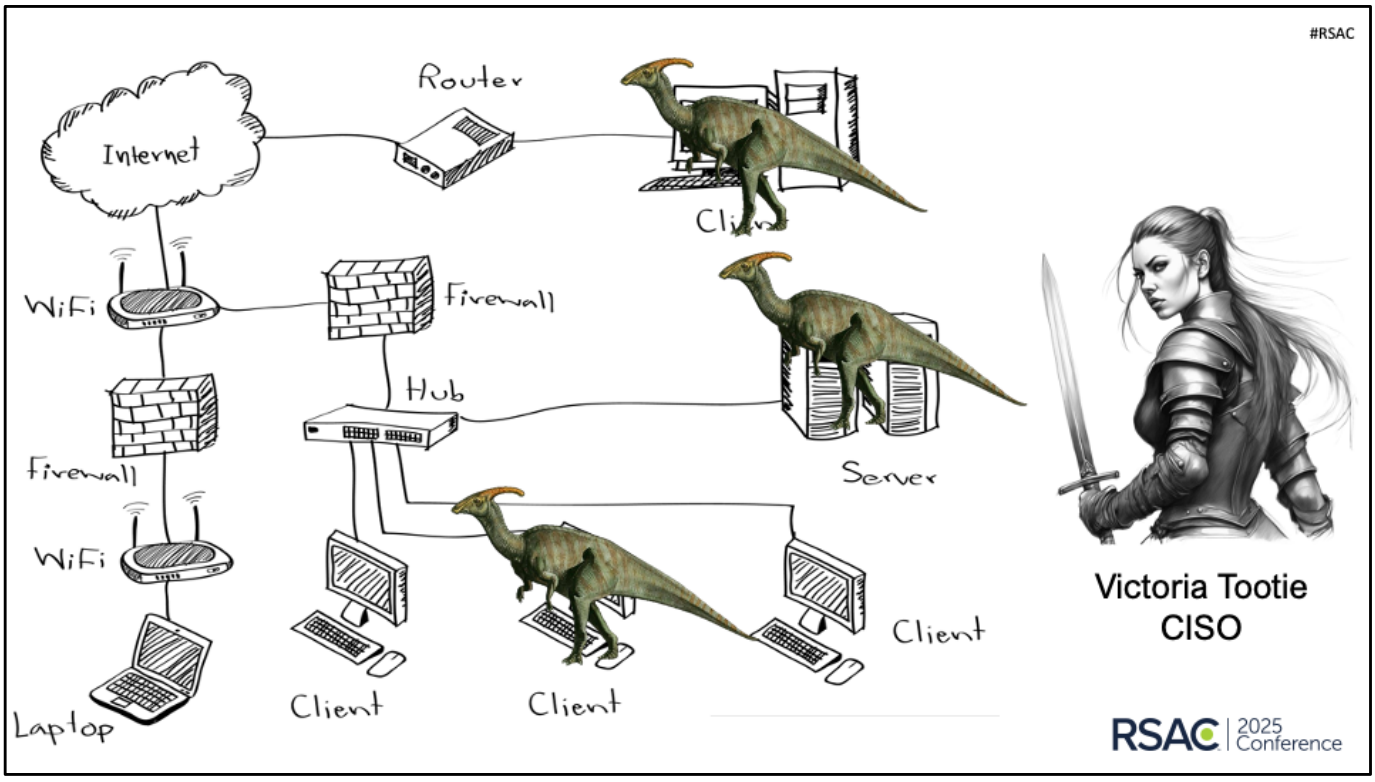


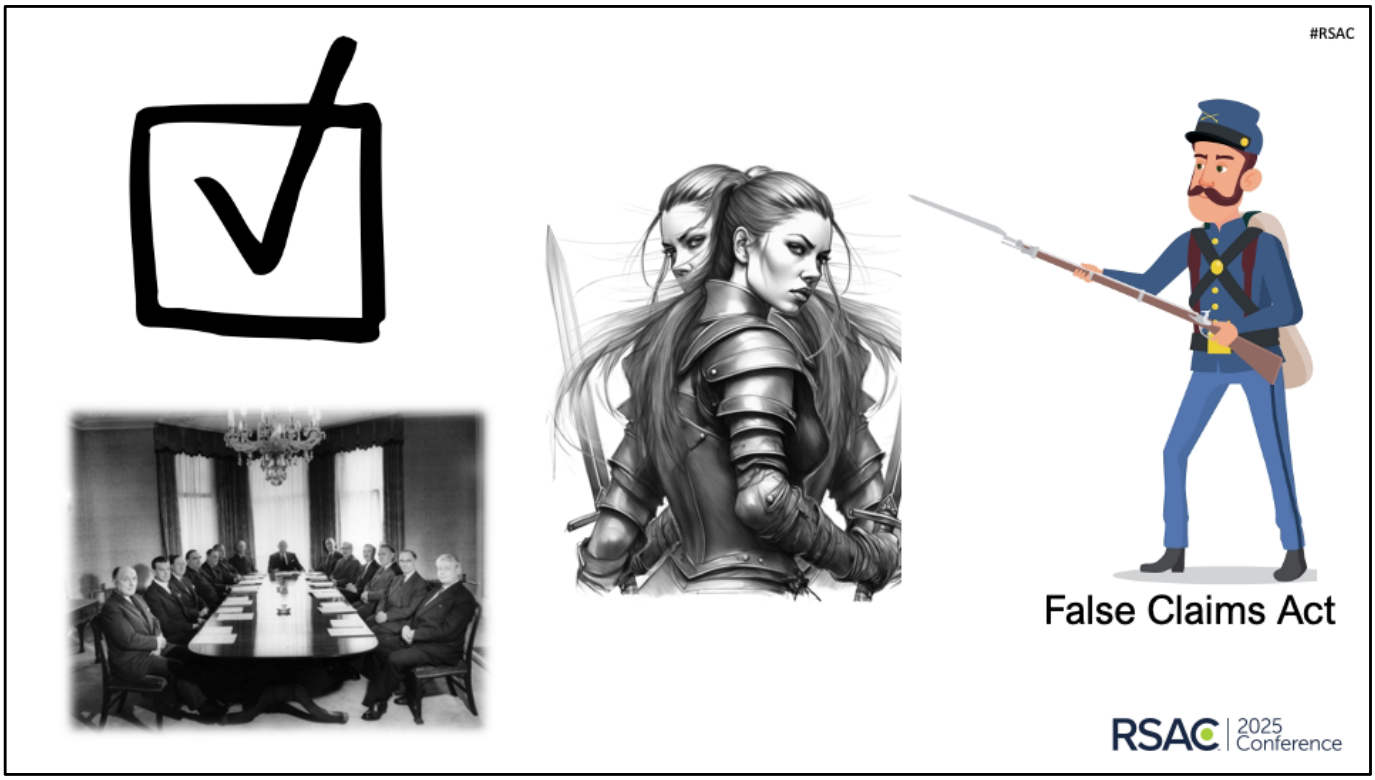
TechniDigitronics makes products that are sold to individuals, businesses, to local and state governments, and to the federal government including DOD.

The company is building a drone that resembles an insect. It's called Bionic Bug. It captures voice and video. Periodically it flies to a bush that conceals hardware that will extract the stored information, transmit it to a satellite, and recharge the drone.

Federal contacts require compliance to standards such as FISMA and those issued by NIST.

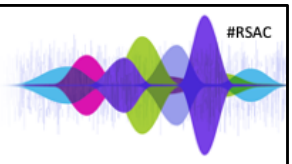


A number of systems have OSs and apps that have reached end of life. They are no longer supported, e.g. no security updates. The hardware hosting them is incapable of running the newer software. A large investment is needed to acquire new hardware with the appropriate software. Then there's the question of whether the applications on which the company depends, e.g. important data on old databases, will still work on the new hardware and software.

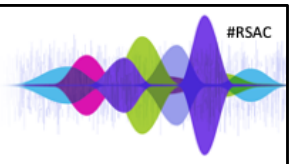


—Audit questions such as are your patches up to date and are you running the latest software are answered "Yes". Left unsaid is the most recent patches from the vendor are several years old and it's the latest software that can be run on the hardware in place. So "Yes" but with fingers crossed.
—A risk assessment report documenting the deficiencies was kept internal to a small number of individuals. The same deficiencies were again reported to executive management the following fiscal year but corrective action was again put off.
—After three years of corrective action being deferred, Victoria took a look at the False Claims Act.
https://www.justice.gov/archives/opa/pr/deputy-attorney-general-lisa-o-monaco-announces-new-civil-cyber-fraud-initiative

The aftermath



- Victoria becomes a whistleblower and contacts the DOD.
- Charged under the False Claims Act, TechniDigitronics settles and pays a significant fine.
- Although not publicly held, there are a few investors. Anne Warbucks is upset that her investment was improperly managed and sues.
- She argues that the company's risk process should have recognized the possibility of an insider informing the DOD of compliance failures.
- On 29 April 2025 in the Moscone federal courthouse…



Dramatis Personæ

- United States Magistrate Judge Laurel Beeler
  - Sitting by appointment
- Kristin J Madigan, *Esquire*
  - Retained Counsel for TechniDigitronics
- Ruth Hill Bro, *Esquire*
  - Counsel for Anne Warbucks
- Julie Lewis
  - Expert Witness for Anne Warbucks
- Hoyt L Kesterson II
  - CEO, TechniDigitronics, and the Greek Chorus

1. Judge Beeler Intro with brief statement of the case;
2. Brief openings (what lawyers expect witnesses to say);
3. Examinations and cross-examinations of both witnesses;
4. Brief closing by each attorney;
5. Judge Beeler designates the audience as her law clerks; she asks for volunteers to state how they would decide and why (no questions in this phase);
6. Questions if time: better to catch us in the hall.

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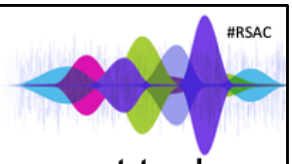
Discussion with her law clerks
Fill the room with your wisdom.

This will be on the final[1 of 2]



- In 2021 the DOJ announced it would use its "civil enforcement tools to pursue … government contractors who receive federal funds, when they fail to follow required cybersecurity standards".
- Private parties who assist the government in identifying and pursing fraudulent conduct can share in any recovery. The DOJ will protect those parties, i.e. whistleblowers, from retaliation including that specified in confidentiality agreements.
- Consider addressing potential whistleblowing as an insider threat during risk assessments.
- Counsel should consider revising employment contracts, third-party agreements, and policy to address whistleblower events.

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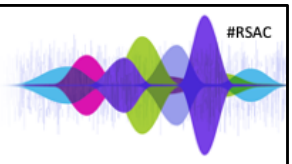

- Organizations should create a culture in which all employees are aware of the need to be secure, not just compliant.
- Organizations should initiate a program that enables employees to report security lapses; that program should be sensitive to the possibility of creating discoverable evidence.
- Counsel should advise the board and executive management that they must address cybersecurity issues brought before them.
- To develop that culture of security awareness, organizations should provide cybersecurity training along with relevant messaging that everyone contributes to creating a secure environment.

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